

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

STEVEN EDWARD CAFARO,
Petitioner.

No. 2 CA-CR 2018-0214-PR
Filed October 30, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20171952001
The Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

Steven Edward Cafaro, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Eckerstrom concurred.

BREARCLIFFE, Judge:

¶1 Steven Cafaro seeks review of the trial court's order summarily dismissing his untimely notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Cafaro has not shown such abuse here.

¶2 Cafaro pled guilty to two counts of attempted sexual exploitation of a minor under the age of fifteen. The trial court sentenced him to a five-year prison term for one offense and, for the second, suspended the imposition of sentence and placed Cafaro on a twenty-year probation term.

¶3 More than six months later, Cafaro filed a notice of post-conviction relief identifying claims of newly discovered evidence, actual innocence, and that his failure to timely seek relief was without fault on his part. He asserted, without elaboration, that he had been "misled by counsel, thus committing fraud," and that "A.R.S. § 13-902 is susceptible to more than one interpretation." The trial court summarily dismissed the notice, noting that Cafaro had not complied with Rule 32.2(b) by explaining his failure to timely raise his claims. Cafaro filed a motion for reconsideration asserting the court, state, and his trial counsel had not informed him about the bases for his claims and, thus, he had only recently learned of them. The court denied that motion, and this petition for review followed.

¶4 Although Cafaro identified claims raisable in an untimely proceeding like this one, he did not "explain the reasons . . . for not raising the claim in a timely manner." Ariz. R. Crim. P. 32.2(b); *see also* Ariz. R. Crim. P. 32.2(a), 32.4(a)(2)(A), (C). Thus, the trial court clearly could summarily dismiss that notice. Ariz. R. Crim. P. 32.2(b). But, on review, Cafaro does not address the court's correct conclusion that his notice did not comply with Rule 32.2(b). He instead apparently refers to his argument, made for the first time in his motion for reconsideration, that the bases for

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his claims had been concealed from him.¹ But a trial court is not required to address arguments made for the first time in a motion for rehearing or reconsideration, and neither is this court. *See State v. Bortz*, 169 Ariz. 575, 577 (App. 1991) (“[A] court will not entertain new matters raised for the first time in a motion for rehearing.”).

¶5 Cafaro additionally complains the trial court, defense counsel, and the state committed “fraud” by “conspiring” to “illegally sentence” him. He also contends the court was required to recuse from the proceeding because of “the implication of fraud” present in his case. Cafaro did not raise these arguments below and, accordingly, we do not address them further. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (court of appeals does not address issues raised for first time in petition for review).

¶6 We grant review but deny relief.

¹Cafaro’s underlying claim, as we understand it, is that he could not be convicted of or sentenced for his crimes because there was no identifiable child involved, only “computer data.”